

**REMARKS**

The Application has been carefully reviewed in light of the Office Action dated May 15, 2008 (“Office Action”). The Office Action rejects Claims 1-52. Applicants traverse the rejections and request reconsideration and allowance of all pending claims.

**Section 112 Rejections**

The Office Action rejects Claims 8 and 21 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Applicants traverse the rejection. The rejection is improper because the Office Action ignores the language of Claim 8. The Office Action states: “The limitation requires using the same index number to define three ranges: greater than, less than however [sic] a third range is mathematically impossible.” (Office Action, p. 2). This statement is incorrect. Claim 8 does *not* recite using the index number *to define* three ranges. Rather, Claim 8 recites “determining the first range of numbers, the second range of numbers, and the third range of numbers *based at least in part* on the index number.” (Emphasis added). The Office Action offers no explanation for its assertion that the language “based at least in part on the index number” in Claim 8 requires the index number to *define* three ranges. In addition, the Office Action offers no evidence that it is “mathematically impossible” to determine “the first range of numbers, the second range of numbers, and the third range of numbers *based at least in part* on the index number.” (Emphasis added). Furthermore, contrary to the statement in the Office Action, Claim 8 does not recite that one range must be “greater than” the index number and another range must be “less than” the index number. Thus, the Office Action ignores the claim language and offers no evidence to support the rejection of Claim 8. Therefore, the rejection of Claim 8 is improper. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 8.

In rejecting Claim 21, the Office Action employs the same rationale used to reject Claim 8. Accordingly, for reasons analogous to those stated above with respect to Claim 8, Applicants respectfully request reconsideration and allowance of Claim 21.

### **Section 102 Rejections**

The Office Action rejects Claims 1, 3-4, 9-13, 15-17, and 22-26 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 7,172,508 B2 issued to Simon, et al. (“*Simon*”). Applicants traverse the rejection.

*Simon* fails to teach, suggest, or disclose each element of Claim 1. For example, *Simon* fails to teach, suggest, or disclose that “for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in Claim 1. The cited portion of *Simon* describes a pari-mutuel betting game (PBG) that permits betting on short-term events or long-term events. (Col. 2, ll. 31-49). Specifically, the cited portion of *Simon* states:

The lengths of the betting events differ for each betting event in the PBG of the present invention. Some rounds are short, like the DRIVE event in football, or the BATTER event in baseball. Some events like WINNER do not terminate until the end of the game, so there is only one WINNER betting event. However, many betting lines will open and close in a typical WINNER betting event since the odds are in a constant state of change. Due to the liquid-frozen asset dynamics just described, players must be clever about how they split their wagering between short term bets (which will become liquid again soon if they win) and long term bets (which will stay frozen, but may pay off very well if they win). In the PBG of the present invention, the players are free to bet any amount (as long as they have enough liquid assets to cover the bet) on any choice on any open betting line during the game. The “money management” aspect of the PBG may be as important as the “sports knowledge” aspect in skillful play.

*Id.* (emphasis added). Thus, the cited portion of *Simon* merely discloses splitting a wagering amount “between short term bets...and long term bets.” *Id.* This portion of *Simon* is irrelevant to the recited element of Claim 1. First, Claim 1 recites allocating the “units” -- not the “bet amount.” The “units” and the “bet amount” are distinct in Claim 1, which recites that each first type of bet has “an associated bet amount and compris[es] a bet that the total number of units earned by a particular participant over a course of a plurality of events will fall within a first range of numbers.” Thus, the “units” that are “allocated” in Claim 1 are not the “bet amount” but rather the “units earned by a particular participant” over a course of a plurality of events. The cited portion of *Simon*, which only discloses splitting wagering amounts, does not teach, suggest, or disclose that the “plurality of units are allocated among participants” as recited in Claim 1. (Emphasis added).

Second, the above portion of *Simon* is irrelevant to Claim 1 because it has nothing to do with allocating the plurality of units “among participants according to a respective finishing position of each participant” as recited in Claim 1. As shown above, the cited portion of *Simon* discloses: “players must be clever about how they split their wagering between short term bets (which will become liquid again soon if they win) and long term bets (which will stay frozen, but may pay off very well if they win).” (Col. 2, ll. 31-49). Thus, the cited portion of *Simon* only discloses splitting a wagering amount according to the length of events -- not “according to a respective finishing position of each participant” as recited in Claim 1. (Emphasis added). Thus, *Simon* fails to teach, suggest, or disclose that “for each of the plurality of events, a plurality of units are allocated among participants according to a respective finishing position of each participant” as recited in Claim 1. Accordingly, the rejection of Claim 1 is improper. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claim 1.

In rejecting Claim 17, the Office Action employs the same rationale used to reject Claim 1. Accordingly, for reasons analogous to those stated above with respect to amended Claim 1, Applicants respectfully request reconsideration and allowance of Claim 17.

Claims 3-4, 9-13, 15-16, and 22-26 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references.

### **Section 103 Rejections**

#### ***Claims 28-29 and 30-52***

Claims 28-29 and 31-52 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Simon*, in view of *Friedman* and of “Handicapping the Race; Bet on McGwire surging past Maris, Sosa fading at the wire” by Ken Daley (“*Daley*”). Claim 30 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Simon* in view of *Friedman*, *Daley* and *McNutt*. Applicants traverse the rejection.

The cited references fail to teach, suggest, or disclose each element of Claim 28. For example, the cited references fail to teach, suggest, or disclose “a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular

index number before the number of units earned by any other of the plurality of participants exceeds the particular index number.” The Office Action relies on *Daley* for this aspect of Claim 28. *Daley* discloses betting on whether a baseball player will break a home-run record. (*Daley*, p. 1). In particular, *Daley* states:

And when it comes to the Great Chase of 1998, that is exactly what most baseball fans want Mark McGwire, Sammy Sosa or both to do....Hit 62....There are the 2-5 odds from Michael Roxborough of America's Line that McGwire will break the record, or the 4-5 odds that Sosa will.

*Id.* Thus, *Daley* discloses that a bettor may place a bet that McGwire will hit 62 home runs. *Daley* also discloses that a bettor may place a bet that Sosa will hit 62 home runs. *Daley*, however, does not teach, suggest, or disclose a bet that McGwire will hit 62 home runs before Sosa or a bet that Sosa will hit 62 home runs before McGwire. Therefore, *Daley* fails to teach, suggest, or disclose “a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants exceeds the particular index number” as recited in Claim 28. (Emphasis added). The other cited references fail to remedy this deficiency of *Daley*. Accordingly, the rejection of Claim 28 is improper. For at least the foregoing reason, Applicants respectfully request reconsideration and allowance of Claim 28.

In rejecting Claim 42, the Office Action employs the same rationale used to reject Claim 28. Accordingly, for reasons analogous to those stated above with respect to Claim 28, Applicants respectfully request reconsideration and allowance of Claim 42.

Claims 29, 30-41, and 43-52 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 29, 30-41, and 43-52.

### ***Claims 14 and 27***

The Office Action rejects Claims 14 and 27 under 35 U.S.C. 103(a) as being unpatentable over *Simon*. Applicants respectfully traverse the rejection. Claims 14 and 27 depend from independent claims shown above to be allowable. In addition, the Office Action admits that “*Simon* is silent about allowing a player to cancel a wager after one or more events have occurred.” (Office Action, p. 5). Furthermore, the Office Action does not cite

any evidence to support the assertion that “it is only logical to allow a player the opportunity to back out of a wager that will take a long time to reach an outcome.” *Id.* Therefore, the Office Action fails to properly support the rejection of Claims 14 and 27. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 14 and 27.

***Claims 5-8 and 18-21***

The Office Action rejects Claims 5-8 and 18-21 under 35 U.S.C. 103(a) as being unpatentable over *Simon* in view of U.S. Patent No. 6,126,543 issued to Friedman (“*Friedman*”). Applicants traverse the rejection. Claims 5-8 and 18-21 depend from independent claims shown above to be allowable. In addition, the Office Action does not suggest that *Friedman* remedies the deficiency of *Simon* that is discussed above with respect to Claims 1 and 17. Therefore, the proposed *Simon-Friedman* combination fails to support the rejection of Claims 5-8 and 18-21, and Applicants request reconsideration and allowance of these claims.

***Claims 2, 10-11, and 23-24***

The Office Action rejects Claims 2, 10-11, and 23-24 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Simon* in view of U.S. Patent No. 6,837,791 B1 issued to McNutt, et al. (“*McNutt*”). Applicants traverse the rejection. Claims 2, 10-11, and 23-24 depend from independent claims shown above to be allowable. In addition, the Office Action does not suggest that *McNutt* or *Friedman* remedies the deficiency of *Simon* that is discussed above with respect to Claims 1 and 17. Therefore, the proposed *Simon-Friedman-McNutt* combination fails to support the rejection of Claims 2, 10-11, and 23-24, and Applicants request reconsideration and allowance of these claims.

**Conclusions**

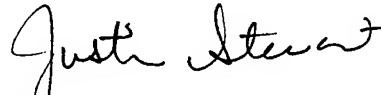
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due; however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Justin N. Stewart  
Reg. No. 56,449  
(214) 953-6755

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**CORRESPONDENCE ADDRESS:**

Customer Number:

**05073**